S Kanara 5

1955

File No. 5/55

K Examined

Legal DEPARTMENT

E BRANCH

Subject:— Suits – Kanara

Institution of a suit against Shri Lakhmichand Narainda Kinger for recovery of Rs. 260-12-0 with interest and costs.

Old C.S. No. 250 of 1953

New C.S. No. 28 of 1954

P.30
E

File No S. Kanara 5/55

Std. Sectt. Slip 24-B

5/55

Very Urgent

By Registered Post

No. Est-II/S-17/18271 of 1952.

Poona-1, 21st October, 1952.

To

The Remembrancer for Legal Affairs,
Fort, Bombay.

Subject:- Contract for fencing posts
Recovery of Rs.260-12-0

I forward herewith a report received from the Agricultural Officer i/c Indoor Colonisation Scheme, Indoor, in accordance with Rule 108 of the Law Officers Rules showing the circumstances under which the suit proposed to be instituted against Shri L.N.Kinger, Contractor, Post Office Indoor, is necessary. The documentary evidence in support pages 1 to 198, submitted by the officer is also enclosed for perusal. As the three year period of limitation expires on the 10th Nov. 1952, I am to request you to move Government to issue suitable orders very early.

25719
24/10/52

Encls 7

for Director of Agriculture.

3 3

Report to be forwarded to Legal Remembrancer to Government as per rule No.108, in case of law suit proposed to be filed against Shri. L.N.Kinger, contractor, P.O.Indoor, District: N.Kanara, by the Agricultural Officer, I/C Indoor Colonization Scheme, Indoor.

****

The gist of the case is attched herewith, which will show that it is necessary to file a suit. The questions to be answered as per rule 108(1) are as below:-

(a) Circumstances which render the suit necessary, as seen in the gist, the contractor is either unwilling to finish the contract or pay back the balance out of the advance vide paras 1 to 9.

(b) The exact nature of the claim for which it is to be instituted: The contractor was advanced Rs. 500/- on 10-11-1949 but upto 10-10-1952 he has completed work amounting to Rs. 239-4-0 only. The balance of Rs. 260-12-0 is to be recovered from him for which this suit is necessary, vide para 1 of gist.

(c) The steps taken to satisfy the claim: On 30th June, 1952 the contractor was asked to pay the balance or complete the work to, both of which he replied in negative, vide para 1 of gist.

(d) What excuse the defendent has urged: He says that the advance of Rs. 500/- given was for cutting poles in forest @ Rs. 25/- per 100 numbers. He has completed cutting of 2000 numbers and hence Rs. 500/- were paid for this service rendered in full (vide para 1 of gist) The Department had to arrange for carting which it has not done as per contractor's claim.

(e) Evidance proposed to be produced by Government: The paras 2 and 3 of the gist show the documentary evidance available. The defendent says, the Department was to arrange carting, but it failed to comply with. The evidance suggests we had spared truck but defendant failed to make use of it. Also the condition of paying Rs.25/- per 100 posts for cutting was for work to be done after 23-5-50 while the advance was paid on 10-11-49 i.e. before this came in operation and therefore advance was not as cutting charges.

(f) Evidance likely to be put forth by defendant: He says the Deaprtmental Officers have purposely not given him the truck for carting posts and hence, the work has remained in complete.

(g) Condition of defendant and whether a decree against him will bear frimt:- Defendant is a settler on Govt. lamd. All his crop belongs to Govt. He has no real estate of his own but is likely to have some movable property made out of side - business he does at Indoor.

As per rule 108 (2), all the Documentary evidance in Pages 1-198 proposed to be produced in court is attached herewith.

As per rule 108 (3) an opinion on the probability of recovery of sum equal to costs is necessary. In this case, I can say, our grounds are very solid which is confirmed by Govt. Pleader, Karwar (vide Evidance Page 173) and therefore we can obtain a decree for the sum of Rs.260-12-0 in dispute with costs

INDOOR.
Dated,13-10-1952.

13/10.
Agricultural Officer, I/c.
Indoor Colonisation Scheme.

g.l.k.13.10.

5_5

Gist of the case of the contract taken by Shri, L.N. Kinger, a sindhi settler of Indoor for supply of fencing posts for Indoor colony.

The contract was given on 21st September, 1949 i.e. 3 years back by Shri, V.S.Habbu, the then District Agricultural Officer, Karwar and Agricultural Officer, I/c. Indoor Colonization Scheme.

The outcome of the same is, that, out of 2000 posts ordered only 435 have been delivered up-to-date. The contractor has been advanced Rs500/- on 10-11-49 but posts worth Rs.239-4-0 only have been delivered up-to-date. The main dispute to-day is about recovery of remaining amount of Rs.260-12-0 from him. The contractor was asked on 25-6-52 to complete the work but he has replied to it on 30-6-52 that the question can not be raised again now. Therefore, on 9-7-52 he was asked to return the remaining amount of Rs.260-12-0 to which he has replied that the amount of Rs.500/- is not received by him as an advance but as cutting charges i.e. the amount is paid to him for services rendered in full. So the case has become complicated.

In this case, the transport of posts from forests was to be done by Govt. truck at Govt. cost. The main reason given by the contractor for not completing the contract is that Agricultural Officer here did not supply him the Departmental truck in time. However the records show that this allegation is baseless as seen hereafter. The work of cutting started on 6-10-49, it was due to be over by 6-11-49 and truck was made available on 19-11-49 i.e. only 13 days delay occured as truck was under repairs. Further, the contractor was out of H.Q. in last week of November, 49 i.e. when truck was available on his return the transport started on 30-11-49. Further on 6,17,18 & 19th December, 49, truck was given and by that date 435 posts were brought. Thereafter contractor himself requested postponement due to harvest season of his crop. After harvest and threshing Agricultural Officer reminded him on 7-1-50 and without paying heed to same he left H.Q. on 11-1-50 and returned 2 months later in March, 50 (on 15-3-50). On 11-2-50, Agril. Officer again reminded him to start Transport work but it was of no use and in reply contractor said that material be carted by Govt. at contractor's cost, which clearly made breach of original conditions. Thus any how he was avoiding transport since 21-12-49 though the truck was spared for him.

After contractor's return to H.Q. on 15-3-50, no action was taken by him to transport for 2 months later which proves his wilful avoidance to transport. Then on 16-5-50, contractor asked Agril. Officer to collect scattered posts from jungle on roadside. Agril. Officer refused this on basis of original contract but allowed him truck from 23-5-50, with no effect. But this time he showed a inclination to take up work and knowing this Shri,Habbu, Agricultural Officer, I/c. through goodness on 23-5-50 gave him certain facilities about payment in stages, i.e. at cutting, at collection to roadside and at transportation to Indoor. By this the Agril. Officer expected quick transport which was essential as rainy season was fast approaching. But the contractor took undue advantage of this and on 26-5-50, informed Agril. Officer that as per Agril. Officer's letter of 23-5-50, he is to be paid by stages (though this was not included in original contract) and so, the advance of Rs.500/- received by him on 10-11-49, is received for cutting charges on 2000 posts @Rs.25/- per x 100. Further he claimed Rs.130-8 for the transport of 435 posts to Indoor in December, 49 @Rs.30/- per 100 posts. This demand by contractor was most unworthy and shows disinclination on the part of contractor to transport further by putting undue demands by twisting the terms of contract.

(p.t.o.)

After this unscrupelcus demand by the contractor on 30-5-50 & 10-8-50, Agril. Officer has informed him that the concession offered about payment by stages as per Agril. Officer's letter of 23-5-50 was for further transport only. Since no transport took place after 19-12-49, question of granting such payments by stages did not arise.

This will show, that, the contractor was not keen on furnishing transport after 19-12-49 though Department gave him every facility and therefore the allegation of contractor, that he could not finish up contract due to non-availability of truck is baseless.

Inspite of this, the contractor had given a 2 month's legal notice on 19-8-50 to Agril. Officer that, Govt. should pay him Rs.600/- remaining out of Rs.1100/- for contract of 2000 posts @Rs.55/- per 100, which he could not complete through fault on Agril. Officer's side. However no further action has been taken by him on this so far. The Public Prosecutor, Karwar was shown the Govt's case, when this notice was received who opined that the case was going against contractor and be contested in court if contractor files a suit.

With this legal notice, the Agril. Officer stopped further dealings with contractor and since 7-9-50, Agril. Officer, attempted to recover the balance of Rs.260-12-0 out of Rs.500/- advances by transport of remaining posts scattered over the jungle. By 13-1-51, a stock of posts in forest was taken and it was found that as per register of Forest Department 435 posts were transported, 767 were scattered all over, and 798 were seemed lost in forest fires, thus account of 2000 posts was complete as per contract. In the meanwhile, the forest Department on 13-7-50, had put a condition of giving a receipt for 2000 posts before transporting any more material. This put hitches in transporting the posts further and even till now we have not been able to transport these from forests, due to this condition by Forest Department.

On 9-4-52, this case was discussed in our Super-visory Committee who resolved that the demand of Forest Dept. in asking for a receipt prior to transportation is unreasonable and requested Chief Conservator to modify it. We have accordingly approached the latter and no reply is received till this day.

The recovery of the dues from contractor by transport of remaining 767 posts scattered all over forest on 13-1-50 i.e. 1½ years before is a remote possibility. By this time, it may be, that none of these posts may be at site through piliferage or forest fires. So this case has become still more complicated. The contractor seems to be bent on not paying the balance out of Rs.500/- advanced to him and is not inclined to finish up the contract also. Therefore the only course open to Govt. is to resort to the court of law for the recovery of said dues of Rs.260-12-0 and losses occured through incompletion of fencing work due to the non-compliance of contract.

g.l.k.13.10.

Agricultural Officer, I/c.
Indoor Colonization Scheme.

Express delivery

7-7

No.Est-II/S-17-18212 of 1952.
Poona 1. 15 November, 1952.

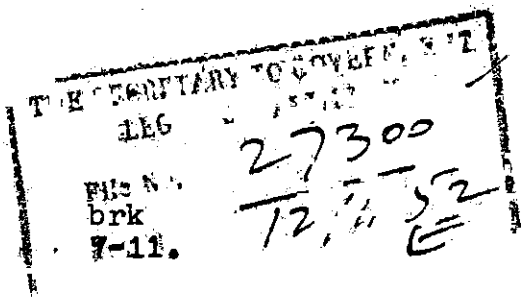
To

The Remembrancer for Legal Affairs,
Fort Bombay.

Subject:- Contract for L.N. Fraser
fencing posts -- Recovery of
Rs. 260-12-0.

Reference this office letter No. Est-II/S-17 18271, dated the 21st October, 1952 on the subject mentioned above.

I am to request that necessary orders issued on my letter under reference as the period of three years of limitation expires on the 10th November, 1952.



for Director of Agriculture

25719
24/10/52

No. 20659/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 9th December 1952.

To

The Director of Agriculture,
Government of Bombay, Poona 1.

Subject: Contract for fencing posts -
Recovery of Rs.260-12-0

Sir,

With reference to your letter No.Est.II/S.17-18212, dated the 7th November 1952 on the above subject, I have the honour to state that limitation period for institution of a suit by Government against a private party is 60 years and not 3 years as presumed by you. However, early steps are being taken to issue instructions to the District Government Pleader, Kanara, for instituting a suit against the Contractor

Yours faithfully,

for Remembrancer of Legal Affairs.

Joined 9/12 Submitted for Signature 8/12 Sol (H).

Submitted after issue

Keep with MSS.

Bom

11 - 11

Letter

No.Est-II/3-17 of 1953.
Poona 1, 13 March 1953.

To,

The Remembrancer of Legal Affairs
Bombay.

Linger case.

Reference:- Your letter No.20657-E dated the 9th Dec.52.

Please let me know whether necessary instructions have been issued to the District Government Pleader, Kanara for instituting a suit against the contractors. If this has not been done, the needful may please be done.

A very early reply is requested.

for Director of Agriculture.

LEGAL DEPARTMENT
16 MAR 19:

S.T.12/3

6703
17/3/53

13 — 13

Legal Department.

This is a proposal from the Director of Agriculture, Poona for authorising the District Government Pleader, Kanara to file a suit against Shri Lakhmichand Naraindas Kinger of Indoor for recovering Rs. 260-12-0 due from him under a contract given to him in the year 1949.

2. Sanction may be accorded to the institution of a suit against Shri Lakhmichand Naraindas Kinger in the Court of the Civil Judge (Senior Division) Karwar on the lines of the Memorandum of Instructions appended hereto.

NB
17.4.53

Resubmitted as Directed.

NB 23.4.53

Sec (M)

Sec 24/4

GOVERNMENT
LEGAL DEPARTMENT ✓
File No. 10279
Dak No. 27/4/53
Diary No. E

RECEIVED in A. & F. D.
on 24.4.53

Secy. A & F. D. 24/4

x 9675/13
26.4.53.

No. 10502/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 5th May April 1953.

Subject:- Institution of a Civil Suit against Shri Lakhmichand Naraindas Kinger for recovery of Rs. 260-12-0 due from him under a contract given to him in the year 1949.

MEMORANDUM.

With reference to the subject noted above, the District Government Pleader, Kanara is informed that sanction is accorded for the institution of a Civil Suit against Shri Lakhmichand Naraindas Kinger for recovery of Rs. 260-12-0 due from him under a contract given to him in the year 1949 and he is requested to take the necessary steps in the matter on the lines of the Memorandum of Instructions, a typed copy of which is sent herewith. ~~in advance~~.

2. Papers of the case (pages 1-198) received from the Director of Agriculture, Poona, are forwarded herewith.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara.

Copy forwarded with compliments to --

(1) The Director of Agriculture with reference to his letter No. Est. II/S-17/18271, dated the 21st October 1952.

(2) The Agricultural Officer, i/c Indoor Colonisation Scheme Indoor, District Kanara.

k.29.

Submitted for orders

Sol (M).

GR Secl- to Press number no
19203/E dl- 30-8-55

From:

The District Government Pleader, Kanara, Karwar.

To

The Remembrancer of Legal Affairs, Bombay.

Subject: Your letter No. 10502 of 5-5-1953 to draft plaint for R.260-12-0 against Laxmichand Narayandas of Mundgod.

No. 317 of 1953. Karwar, dated 19th May 1953

LEGAL DEPARTMENT
23 MAY 1953

Sir

am enclosing herewith copy of letter No.908 dated 12th instant received from the Agricultural Officer I/C Indoor. It appears that there is a further claim of Rs.690-6-0 as mentioned in the said letter. But the suit for R.260-12-0 is not one for damages. The cause of action is different. The claim for Rs.690-6-0 will not arise until actual payment to the Forest Department. Therefore it appears that the claim for Rs.690-6-0 cannot be added in the suit now contemplated for refund of advance. This point may please be clarified.

Secondly, Indoor is a village in Mundgod Taluka. It is in the jurisdiction of the Sirsi Court. It appears that ordinarily the suit has to be filed in the court within whose jurisdiction the cause of action arises. Neither section 79 nor the provisions of order 27 C.P.C. specifies any special forum other than the ordinary one under section 20 C.P.C. Therefore I seek your advice as to whether the suit should be filed in Sirsi Court or in the Court of Civil Judge S.D.N., Karwar, as ordinarily, Sirsi Court is competent to try suits up to the value of 10 thousands.

Yours faithfully,

Dist.Govt.Pl.Kanara.

SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 12465
Sub No.
Branch E-25-5-53

Copy forwarded for information to the Agricultural Officer I/C Indoor Scheme Indoor, Post Mundgod with reference to his letter No.908 of 12-5-1953.

Submitted for orders
27/5
D.G.P.Kanara.
sal (M)

Attachment of the property may be
dismissed in pursuance of
Order 32(1) of the Bombay
Civil Courts Act, 1869 by
which all suits of this
kind is cognizable by the
Court of the Civil Judge S.D. of the dis-
trict

As regards the recovery
of the claim for Rs 650-6-
for Rangoli the mixed Tukra
by the D.P. that the claim
will be fraudulent one.

In the circumstances the claim
may be kept to be objected
as a special. Suit when
the cause of action arises

Date
27/5

LETTER.

19 27

No.F.S./908 of 1953.
Indoor, 12th May, 1953.

To

The District Government Pleader, North Kanara,Karwar

Subject: Proposed Civil Suit against Shri L.N.Kinger of Indoor.

Reference: No.10502/1 of 5-5-1953 from Remembrancer of Legal Affairs, addressed to you.

As per this reference, Government has sanctioned filing of a Civil suit against Shri Kinger for recovery of Rs.260-12-0.

In this contract given to Shri Kinger, another complication has come ti light. That is about the royalty to be paid to Forest Department for the forest material cut to prepare the fencing posts.

The Forest Department has sent us a bill for Rs.882-5-3 in this connection, for 2000 posts. But we have actually received 435 posts only. So we cannot pay the bill of Rs.882-5-3 fully. I feel that the remaining of this bill i.e., for 1565 posts will have to be recovered from Shri Kinger as he has cut the material for these 1565 posts but failed to deliver the same to us at Indoor. I have to request you to please consider this before starting the proceedings.

If you feel that royalty for 1565 posts not delivered by him to us, can be recovered from Shri Kinger, then please add an amount of Rs.690-6-0 for 1565 posts @ 84.7 pies per post to Rs.260-12-0 due from him.

Shri Kinger is in Bombay since a month or so. He is expected here anytime now. If you want his Bombay address for issuing a notice, it is given below :-

Shri L.N.Kinger,
C/O Tulsidar Hiranand Bankers,
Jaihind Building No.1, First Floor, Bhuleshwar,
Bombay No.2.

Sd.Illegible,
Agricultural Officer,I/C.Indoor,
Scheme Indoor.

DNH.12/5.

- 21 -

No. 12075/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 30th May 1953.

Subject:- Institution of a Civil Suit against Shri Lakhmichand Naraindas Kinger for recovery of Rs. 260-12-0 due from him under a contract given to him in the year 1949.

Memorandum.

With reference to your letter No. 317, dated the 19th May 1953 on the subject noted above, attention of the District Government Pleader, Karwar is invited to the provisions of section 32(1) of the Bombay Civil Courts Act, 1869 by which all suits to which Government is a party have to be instituted in the Court of the Civil Judge, Senior Division of that District.

As regards the inclusion of the claim for Rs. 690-6-0 for Royalty the view taken by the District Government Pleader that the claim will be premature seems to be correct. That claim may be left to be agitated in a separate suit when the cause of action properly arises.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara,
Karwar.

Issued 30/5.

cks/29.5.

Submitted for signature
30/5 Asst (M)

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 374 of 1953. Karwar, dated 11th June 1953.

Sir,

As directed by your letter No.10502/E dated 5th May 53 I have enclosed herewith a draft of the plaint for filing a suit against Laxmichand Naraindas Kinger. It may please be returned duly approved.

Yours faithfully,

D.G.P.Kanara.

LEGAL DEPARTMENT
15 JUN 1953

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Suit No. 14732
Branch E. 17-6-53

34

L.D.

The D.G.P Karwar has forwarded a draft plaint in Ringers case

The draft plaint as drafted by the D.G.P. appears to be in order except for the last word in para 4 at p. 37

The draft plaint may be approved.

LA
22.6.53

Sol (M) Two fair copies of the plaint may be sent to the D.G.P.

25-35

In the Court of the Civil Judge, S.Dn.,Karwar.

Smc.Suit No. of 1953.

The State of Bombay ...Plff.

Vs.

Laxmichand Nrainder Kinger Refugee Settler aged about 45, residing at Indoor in Mundgod Taluka. ...Deft.

Claim :- Rs.

The plff's case is as follows :

1. A contract for supplying Jamba posts had been given to the deft on 22-9-1949. As per the terms of the contract he had to supply 2000 Jamba Posts to the Agricultural Officer, Indoor, at Indoor District Kanara, within one month of the receipt of the permit and the ~~A.O~~ Agricultural officer, Indoor was to furnish a truck with petrol for transport of the posts from Gunjavati to Indoor. The deft was to receive payments after the delivery of all the posts at Indoor.

2. The deft received the permit for cutting the Jamba Trees from the Forest at Gunjavati on 6th October 1949 and he started the cutting work immediately. As per the instructions of the Range Forest Officer all the 2000 posts were to be kept ready at one place before commencing the transport. The Overseer under the Indoor Scheme was sent to Gunjawati on 3rd November 1949 to see if the posts were ready. He reported on 4th November 1949 that approximately 1600 poles were ready. But out of these ~~4~~ only 400 posts had been stacked at the P.W.D.main road while the remaining 1200 had been lying in the Forest. As the contractor requested that he was in need of money, the ~~A.O~~ Agricultural officer, Indoor gave him an advance of Rs.500/- on 10th November 1949.

3. The truck was made available to the deft. on 19-11-1949 as it had been sent to Hubli for repairs and passing. The A.O. Agricultural Officer, Indoor could not furnish the truck before 6-11-1949 as provided in the original contract. Hence he asked the deft to engage a watchman at Govt costs. On the return of the truck from Hubli the contractor was informed on 19-11-1949 that the truck was ready and available. He was also asked to intimate to the A.O. as to whether all the 2000 Jamba posts

2737

were ready for transport on the road-side. When the truck was available the deft was out of head quarters, i.e. Indoor. On his return the deft started the work of transporting the posts on 30-11-1949. He did not raise any objection on the ground that the truck was not supplied on or before 6-11-1949. He had waived that objection. He brought 40 posts on ~~30~~ 16-11-1949. Further on 16th, 17th, 18th and 19th December 1949 he brogght 395 posts. Thus in all he brought 435 posts.

4. Thereafter the deft himself requested the postponement on the ground that it was the harvest season. After the harvesting and threshing season the A.O. reminded him on 7-1-1950 to start the transporting of the remaining posts. But the deft did not pay any heed to the reminder but he left the Head Quarters on 11-1-1950 and returned 2 months later in March 1960. On 11-2-1950 the A.O. again issued a reminder to the contractor to start the transport work but he did not comply. The deft replied that the material may be carted by the Govt at his cost which was clearly against the terms of the contract. The deft was avoiding transport operations on one pretext or other since 21st December 1949 eventhough the truck was available and was offered for his [dues] use.

5. After deft's return to the Head Quarters on 15th March 1950 no action was taken by him to transport the posts for 2 months. Then on 16th May the deft asked the A.O. to collect the scattered posts from the Forest to the main road. The A.O. had to refuse this request as it was opposed under the terms of the contract.

6. The Agricultural Officer offered the deft-contractor the use of the truck again from 23rd May 1950. Yet the deft did not carry out the work of transporting the remaining posts. The A.O. on 23-5-1950 promised to give the deft certain facilities about the payment etc.,

29

as the rainy season was fast approaching and therefore the material had to be collected and transported to Indoor. But the deft took undue advantage of this offer and did not complete the work. He did not do any work after 19th December 1949 although the Agricultural Officer had given him every facility. Thus the deft has committed breach of contract and the plff is entitled to claim damages from him for the breach of the contract. However the present claim is confined to the balance due out of the ~~xxxxxx~~ amount advanced to him. The deft had supplied only 435 posts and therefore he was entitled to deduction of Rs.239-4-0 for this work at the agreed rate of Rs.55/- per hundred posts. Therefore the balance due to the plff comes to Rs.260-12-0. Interest at 6% is claimed on this amount. The contractor-deft failed to pay this amount inspite of repeated reminders. Hence this suit for recovery of this amouht.

7. The cause of action to recover ~~of~~ this amount arose at Indoor on or about the 10th November 1949 when the deft received the advance of Rs.500/- and on or about the 26th May 1950 when the deft refused to carry out the remaining part of the contract.

8. As this is a suit to which the Govt is a party and the deft is a resident and settler at Indoor within the jurisdiction of this Court, this Court has got jurisdiction to try this suit.

9. Interest at 6% is claimed from 26-5-1950 till the date of the institution of this suit. The reliefs claimed are as follows :

(1.) The deft should be ordered to pay an amount of Rs.260-12-0 remaining due to the plff out of the amount advanced to the deft on 10-11-1949 ... Rs.260-12-0.

This will be calculated while filing the suit.

(2) Interest at 6% from 26-5-50 till the date of the suit

(3) The deft should be ordered to pay the costs of the suit to the plff.

4) The plff be permitted to amend the plaint as and when necessary.

(5) The court may be pleased to pass such orders as justice of the case may require.

Drafted by me
Blackie & Co

Sm.C 250 of 53

No. 13667/E-3/4
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 25-6-1953.
Karwar C.S. No 61/1953

Memorandum.

With reference to his Letter No. 374 dated the 11-15 June 1953 forwarding a draft ~~written statement~~ plaint in the suit noted above for approval, the District Government Pleader, Karwar is informed that two copies of the revised ~~approved~~ draft are forwarded herewith.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara.

KUP.
29/1

Issued 25/6.

Scibm Ltr & separate
Vk.
25/6

Vol 80

33 4+

In the Court of the Civil Judge, S.Dn. Karwar.

Smc. Suit No. 250 of 1953.

The State of Bombay... Plaintiff

vs.

Laxmichand Naraindas Kinger, Refugee Settler aged about 45, residing at Indoor in Mundgod Taluka..... Defendant.

Claim Rs.

The plff's case is as follows:-

1. A contract for supplying Jamba posts had been given to the deft on 22-9-1949. As per the terms of the contract he had to supply 2000 Jamba Posts to the Agricultural Officer, Indoor, at Indoor District Kanara, within one month of the receipt of the permit and the Agricultural Officer, Indoor was to furnish a truck with petrol for transport of the posts from Gunjavati to Indoor. The deft. was to receive payments after the delivery of all the posts at Indoor.

2. The deft received the permit for cutting the Jamba Trees from the Forest at Gunjavati on 6th October 1949 and he started the cutting work immediately. As per the instructions of the Range Forest Officer all the 2000 posts were to be kept ready at one place before commencing the transport. The Overseer under the Indoor Scheme was sent to Gunjavati on 3rd November 1949 that approximately 1600 posts were ready. But out of these only 400 posts had been stacked at the P.W.D. main road while the remaining 1200 had been lying in the Forest. As the contractor requested that he was in need of money, the Agricultural Officer, Indoor gave him an advance of Rs. 500/- on 10th November 1949.

3. The truck was made available to the deft. on 19-11-1949 as it had been sent to Hubli for repairs and passing. The Agricultural Officer, Indoor could not furni the truck before 6-11-1949 as provided in the original contract. Hence he asked the deft. to engage a watchman at Govt. costs. On the return of the truck from Hubli

contractor was informed on 19-11-1949 that the truck was ready and available. He was also asked to intimate to the Agricultural Officer, Indoor as to whether all the 2000 Jamba posts were ready for transport on the road-side. When the truck was available the deft. was out of head quarters, i.e. Indoor. On his return the deft started the work of transporting the posts on 30-11-1949. He did not raise any objection on the ground that the truck was not supplied on or before 6-11-1949. He had waived that objection. He brought 40 posts on 30-11-1949. Further on 16th, 17th, 18th and 19th December 1949 he brought 395 posts. Thus in all he brought 435 posts.

4. Thereafter the deft himself requested the post-ponement on the ground that it was the hargest season. After the harvesting and threshing season the Agricultural Officer, Indoor reminded him on 7-1-1950 to start the transporting of the remaining posts. But the deft did not pay any heed to the reminder but he left the Head Quarters on 11-1-1950 and returned 2 months later in March 1950. On 11-2-1950 the Agricultural Officer, Indoor again issued a reminder to the contractor to start the transport work but he did not comply. The deft replied that the material may be carted by the Govt at his cost which was clearly against the terms of the contract. The deft was avoiding transport operations on one pretext or other since 21st December 1949 eventhough the truck was available and was offered for his use.

5. After deft's return to the Head Quarters on 15th March 1950 no action was taken by him to transport the posts for 2 months. Then on 16th May the deft asked the Agricultural Officer to collect the scattered posts from the Forest to the main road. The Agricultural Officer, Indoor had to refuse this request as it was opposed under the terms of the contract.

6. The Agricultural Officer offered the deft contractor the use of the truck again from 23rd May 1950. Yet the

deft did not carry out the work of transporting the remaining posts. The Agricultural Officer, Indoor on 23-5-1950 promised to give the deft certain facilities about the payment etc., as the rainy season was fast approaching ~~the~~ and therefore the material had to be collected and transported to Indoor. But the deft took undue advantage of this offer and did not complete the work. He did not do any work after 19th December 1949 although the Agricultural Officer had given him every facility. Thus the deft has committed breach of contract and the plff is entitled to claim damages from him for the breach of the contract. However the present claim is confined to the balance due out of the amount advanced to him. The deft had supplied only 435 posts and therefore he was entitled to deduction of Rs. 239-4-0 for this work at the agreed rate of Rs. 55/- per hundred posts. Therefore the balance due to the plff comes to Rs. 260-12-0. Interest at 6% is claimed on this amount. The contractor-deft failed to pay this amount inspite of repeated reminders. Hence this suit is for recovery of this amount.

7. The cause of action to recover this amount arose at Indoor on or about the 10th November 1949 when the deft received the advance of Rs. 500/- and on or about the 20th May 1950 when the deft refused to carry out the remaining part of the contract.

8. As this is a suit to which the Govt is a party and the deft is a resident and settler at Indoor within the jurisdiction of this Court, this Court has got jurisdiction to try this suit.

9. Interest at 6% is claimed from 26-5-1950 till the date of the institution of this suit. The reliefs claimed are as follows:-

(1) The deft should be ordered to pay an amount of Rs. 260-12-0 remaining due to the plff out of the amount advanced to the deft on 10-11-1949. .. Rs. 260-12-0

(2) Interest at 6% from 26-5-50 till the date of the s uit.

This will be calculated while filing thesuit.

(3) The deft should be ordered to pay the costs of the suit to the plff.

(4) The plff be permitted to amend the plaint as and when necessary.

(5) The court may be pleased to pass such orders as justice of the case may require.

HSP/25/6

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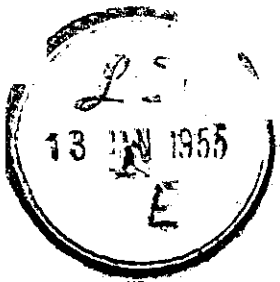


From

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

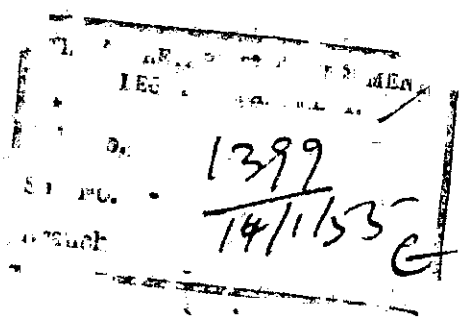
No. 41 of 1955. Karwar, dated 11-1-1955.

Sir,

O.S.No.28-1954 filed ~~by me~~ on behalf of the State against Laxmichand Narayan Kinger of Mundgod has been decreed yesterday with costs. Copy of the decree has been applied for The defendant asked for instalments and as he is a Refugee without any estate of his own the court has granted monthly instalments to give him a chance to repay the amount.

Yours faithfully,

Dist.Govt.Pl.Kanara.



Summons / intimation
C.S No 2984 of 2012
in favour of Gant.

VC
14/1

Sol (M.C.) Ms
15-1

Submitted

28 Filed 5 Kamara 13-1-(Mail

12
2/12
Submitted 4/12

Suits :

Kanara.

For recovery of Rs. 260-12-0 with interest and costs from Shri Lakhmichand Naraindas Kinger.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 19203/E.

Civil Suit no 250 of 28/54

Sachivalaya, Bombay, 30th August 1955.

Letter from the Director of Agriculture, Poona—Forwarding papers and requesting sanction to the Institution of a suit against Shri Lakhmichand Naraindas Kinger for recovery of Rs. 260-12-0 with interest and costs.

Memorandum to the District Government Pleader, Kanara, No. 10502/E, dated the 5th May 1953—Forwarding a copy of the Memorandum of Instructions in advance.

RESOLUTION.—Sanction is accorded to the Institution of a suit against Shri Lakhmichand Naraindas Kinger for recovery of Rs. 260-12-0 with interest and costs.

By order and in the name of the Governor of Bombay,

original sd/- 30/11

for J. R. DHURANDHAR,
Secretary to Government.

Leg. H 342—1

[P.T.O.

Issued 1/12/55

Submitted for signature

30/11 D. S (Civil)

To

* The Agriculture and Forests Department,
* The Director of Agriculture, Poona,
The District Government Pleader, Kanara (with two copies of Memorandum of Instructions).

*With a copy of Memorandum of Instructions.

No. of 1955.

Copy forwarded for information and guidance to

41, 57

Memorandum of Instructions.

This is a proposal from the Director of Agriculture, Poona, to file a suit against Shri Lakhmichand N. Kinger of Indoor for recovering Rs. 260-12-0 with interest and costs.

2. The facts giving rise to the suit are as under : —

A contract for supplying 2,000 Jambha posts was given to Shri Lakhmichand N. Kinger on 22nd September 1949. As per the terms of the contract, Shri Lakhmichand the contractor had to supply 2,000 Jambha posts to the Agricultural Officer, Indoor, at Indoor, district Karwar, within one month of the receipt of the permit and the Agricultural Officer was to furnish a truck with petrol for transport of the posts from Gunjavati to Indoor. The contractor was to receive payment after delivery of all the posts at Indoor. The contractor received the permit for cutting the Jambha trees from the forest on the 6th October 1949. The contractor began the cutting work on the 6th October 1949. As per the instructions of the Range Forest Officer, all 2,000 posts were to be kept ready at one place before commencing transport. The overseer under Indoor Scheme was sent to Gunjavati on 3rd November 1949 to see if the posts were ready. He reported on 4th November 1949 that approximately 1,600 posts were ready. Out of these 400 posts had been stacked at the Public Works Department main road while the remaining 1,200 had been lying in the forest. As the contractor requested that he was in need of money, the Agricultural Officer gave him an advance of Rs. 500 on 10th November 1949.

The truck could not be made available till 19th November 1949 as the same had been sent to Hubli for repairs and passing. As the Agricultural Officer could not furnish the truck before 6th November 1949, as provided in the original contract he asked Shri Lakhmichand to engage a watchman at Government cost. On the return of the truck from Hubli the contractor was informed on 19th November 1949 that the truck had come after due repairs and was available. He was also asked to intimate to the Agricultural Officer whether all the 2,000 Jambha posts were ready for transport on the roadside. When the truck was available, the contractor was out of the Headquarters. On his return the contractor started the work of transporting the posts on 30th November 1949. He did not raise any objection on the ground that the truck was not supplied on or before the 6th November 1949. He had waived that objection. He brought 40 posts on 30th November 1949. Further on 6th, 17th, 18th and 19th December 1949 he brought 395 posts. Thus in all he brought 435 posts. Thereafter the contractor himself requested postponement due to harvesting season of his crop. After harvesting and threshing seasons the Agricultural Officer reminded him on the 7th January 1950 to start transporting the remaining posts, but the contractor without paying any heed to the reminder, left the Headquarters on the 11th January 1950 and returned two months later in March 1950. On the 11th Febru-

ary 1950, the Agricultural Officer again reminded the contractor to start the transport work, but it was of no use. The contractor replied that the material be carted by Government at contractor's cost, which clearly was against the terms of the original contract. The contractor was avoiding transport operations since the 21st December 1949 even though the truck was available and was offered for his use.

After the contractor's return to the Headquarters on the 15th March 1950 no action was taken by him to transport the goods for two months. Then on the 16th May 1950, the contractor asked the Agricultural Officer to collect the scattered posts from the forest to the main road. The Agricultural Officer refused this on the basis of the terms of the original contract. The Agricultural Officer offered the contractor the use of the truck again from 23rd May 1950. The contractor however did not carry out the work of transporting the remaining posts. The Agricultural Officer on 23rd May 1950 promised to give the contractor certain facilities about payment to him by stages in the future, that is, some amount to be paid at cutting, at collecting to roadside and at transportation to Indoor. By this the Agricultural Officer expected to induce the contractor to finish the work quickly which was essential as the rainy season was fast approaching. But the contractor took undue advantage of this offer and on 26th May 1950 he wrote to the Agricultural Officer that as per the Agricultural Officer's letter of 23rd May 1950 he was to be paid by stages (though this was not included in the original contract) and so the advance of Rs. 500 received by him on 10th November 1949 was received for cutting charges on 2,000 posts at Rs. 25 per 100 posts. Further he claimed Rs. 130-8-0 for the transport of 435 posts to Indoor in December 1949 at Rs. 30 per 100 posts. The Agricultural Officer informed the contractor that the facilities offered to him for expediting the fulfilment of the contract did not modify the terms of the original contract and were not applicable to work already finished. They were to apply to future work after 23rd May 1950.

The contractor did not do the work of transporting any posts after 19th December 1949 although the Agricultural Officer gave him every facility, and therefore the allegation of the contractor that he could not fulfil the terms of the contract due to non-availability of the truck is baseless. He has thus committed a breach of the contract and the Government can claim damages from him for the breach. However the Government have decided to recover from the defendant only the amount overpaid to him. The contractor did the work of supplying 435 posts from Gunjawati to Indoor. Against this work he was given an advance of Rs. 500. The contractor was entitled to Rs. 239-4-0 for this work at the rate of Rs. 55 for 100 posts. An amount of Rs. 260-12-0 is due from the contractor to the Government for overpayment. The contractor has not paid the amount inspite of repeated demands nor has he done the remaining work of transport. It is therefore found necessary to file a suit against Shri Lakhmichand N. Kinger to recover the amount.

3. The cause of action to recover the amount of Rs. 260-12-0 with future interest at 6 per cent. may be stated to have arisen at Indoor on or about the

10th November 1949 when the advance was given to Shri Lakhmichand N. Kinger and on or about 26th May 1950 when Shri Lakhmichand refused to carry out the remaining part of the contract.

4. The suit should be filed in the Court of the Civil Judge, Senior Division, Karwar. The State of Bombay *should be named the plaintiff and Shri Lakhmichand* Naraindas Kinger as the defendant in the suit. The suit claim should be for Rs. 260-12-0 with interest at 6 per cent. from 25th May 1950 to the date of the institution of the suit.

5. The reliefs to be prayed for should be as follows :—

(*a*) The defendant should be ordered to pay to the plaintiff the suit claim plus interest at 6 per cent. thereon from the date of the institution of the suit till realisation of the whole amount.

(*b*) The defendant should be ordered to pay the costs of this suit to the plaintiff.

(*c*) The plaintiff be permitted to amend the plaint as and when necessary.

(*d*) The Court should be pleased to pass such orders as the justice of the case may require.

6. The District Government Pleader, Kanara, may lead the necessary oral and documentary evidence in the case. The draft plaint should be sent for R. L. A's approval before it is filed in the Court.

7. The defendant is likely to raise the contention that because of the non-availability of the truck for transport of the posts, he could not fulfil the terms of the contract within the stipulated time. This contention should be met by stating that as the truck was sent for repairs, it could not be made available to him before 19th November 1949, and that all the 2,000 posts were not kept ready on the main road side by the contractor as laid down in the contract. But after 19th November 1949 the truck was available at all times, but the contractor himself wanted post-ponement due to the harvesting season and also he wanted time because of his daughter's marriage in Bombay. Thus the contractor avoided to do the work of completing the contract on one excuse or another.